

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0370V

SHANNON YODOWITZ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 11, 2025

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, for Petitioner.

Joseph Douglas Leavitt, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On January 8, 2021, Shannon Yodowitz filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act").³ Petitioner alleges that she suffered a left shoulder injury related to vaccine administration ("SIRVA"), a defined Table Injury, after receiving the influenza vaccine on October 23, 2020. Amended Petition at 1, ¶¶ 1, 8. On August 23, 2024, I issued a decision awarding damages following briefing by the parties. ECF No. 39.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

³ On November 8, 2022, Petitioner filed a more detailed amended petition. ECF No. 19.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$38,733.39 (representing \$35,012.40 for attorney's fees, \$3,690.99 for attorney's costs, and \$30.00 for Petitioner's out-of-pocket litigation costs). Petitioner Application for Attorneys' Fees, filed Feb. 28, 2025, ECF No. 44. In accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred \$30.00 in out-of-pocket expenses. *Id.* at 2.

Respondent reacted to the motion on March 10, 2025, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, 3 n.2, ECF No. 45. On March 11, 2025, Petitioner filed a reply, criticizing Respondent's hourly rate discussion and reiterating her previous fees request. ECF No. 46.

Having considered the motion along with the invoices and other proof filed in connection, I find a reduction in the amount of costs to be awarded appropriate, for the reason set forth below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Hum. Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Hum. Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Hum. Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Hum. Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Hum. Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees

and costs sought] at the time of the submission.” *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner’s counsel “should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.” *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

The rates requested for work performed through 2025 are reasonable and consistent with our prior determinations, and will therefore be adopted. And tasks that can be completed by a paralegal or legal assistant have been billed at that lower rate, even when performed by an attorney. *E.g.*, ECF No. 44-1 at 4 (10/12/21); see *Riggins v. Sec’y of Health & Hum. Servs.*, No. 99-382V, 2009 WL 3319818, at *21 (Fed. Cl. Spec. Mstr. June 15, 2009).

Regarding the time billed, I note this case required additional briefing regarding damages. See Petitioner’s Brief on Damages, filed Dec. 4, 2023, ECF No. 38. Petitioner’s counsel expended approximately 9.5 hours drafting the damages brief. ECF No. 44-1 at 8-10. I find this time to have been reasonably incurred. (And all time billed to the matter was also reasonably incurred.)

ATTORNEY AND PETITIONER COSTS

Petitioner requests \$3,720.99 in overall costs (\$3,690.99 in attorney costs and \$30.00 in Petitioner’s out-of-pocket litigation costs) and has provided receipts for all expenses. ECF No. 44-2. However, one expense of \$2,472.94 is from an MRI performed on June 9, 2024. *Id.* at 16. Because the MRI was performed more than two years after I determined Petitioner’s SIRVA had resolved, and approximately six months after damages briefing was submitted, it is difficult to ascertain the purpose of this testing. Petitioner has not provided adequate support to justify reimbursement of this expenses. **This results in a deduction of \$2,472.94 for the amount requested for attorney costs.**

CONCLUSION

The Vaccine Act permits an award of reasonable attorney’s fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT Petitioner’s Motion for attorney’s fees and costs. I award a total of **\$36,260.45** (representing \$35,012.40 for

fees, \$1,218.05 in attorney's costs, and \$30.00 in Petitioner's litigation costs) to be paid through an ACH deposit to Petitioner's counsel's IOLTA account for prompt disbursement. In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran

Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.